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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,840	12/07/2001	Kazuki Sakata	Q66840	7791

7590 02/02/2007  
SUGHRUE, MION, ZINN, MACPEAK & SEAS  
2100 Pennsylvania Avenue, N.W.  
Washington, DC 20037

EXAMINER

THOMPSON, JAMES A

ART UNIT	PAPER NUMBER
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2625

MAIL DATE	DELIVERY MODE
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02/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/004,840

Applicant(s)

SAKATA ET AL.

Examiner

James A. Thompson

Art Unit

2625

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-6.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

**DAVID MOORE**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's proposed amendments changes the scope of the claims, and will therefore require further consideration and further search. Thus, the **proposed amendments to the claims will not be entered.**

### *Response to Arguments*

2. Applicant's arguments filed 16 January 2007 have been fully considered but they are not persuasive.

**Regarding page 3, line 2 to page 4, line 12:** While it is true that the lens in Zerbe (EP 0 934 851 A2) is not within the hood, Applicant's arguments are based on the proposed amendments to the claims, which have not been entered. Claim 1, as presently recited, states that "said lens project[s] within the hood". Given that it is a lens that is projecting, one of ordinary skill in the art would reasonably have interpreted that to mean that the lens optically projects within the hood. Such an interpretation is certainly a reasonable one, and Applicant is respectfully reminded that, during the course of patent examination, claims are given their broadest reasonable interpretation consistent with the specification [see MPEP §2111].

**Regarding page 4, lines 13-29:** Examiner is not arguing that an optical filter is used, but rather a breathable dustproof filter as required by the claim language. This should be clear not only from the office action [see page 7, lines 11-14 of previous office action, mailed 16 October 2006], but also from the portion of Suzuki (US Patent 5,034,772) cited in said previous office action [see column 3, lines 42-47 of Suzuki]. The sensor taught by Zerbe contain electronics within the hood. A breathable dustproof filter would be very useful in keeping dust and other particulate matter away from the electronics and the light sensors contained within the hood. While the breathable dustproof filter would not provide much aid to the lens itself, a breathable dustproof filter would protect all the electronics. This is clearly advantageous given the damage dust and particulate matter can inflict upon electronics, as well as the fact that electronic equipment tends to attract dust. While the combination of Zerbe and Suzuki may not provide the precise same advantage as set forth in Applicant's disclosure, the combination does provide a clear advantage that one of ordinary skill in the art at the time of the invention would have recognized.

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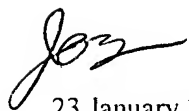
**Regarding page 5:** Since the proposed amendments to claim 1 have not been entered, and claim 1 as presently recited is not allowable over the prior art, claims 2-6 cannot be considered allowable merely due to their dependencies from claim 1.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Thompson whose telephone number is 571-272-7441. The examiner can normally be reached on 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David K. Moore can be reached on 571-272-7437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



23 January 2007

James A. Thompson  
Examiner  
Technology Division 2625



**DAVID MOORE**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER**